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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.2.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.11 of 2004

Commissioner of Income Tax
Chennai ...Appellant

-vs-

M/s.Sundaram Finance Limited
Chennai ...Respondent

Tax Case Appeal filed under Section 260(A) of the Income Tax Act, against the order of the Income Tax Appellate Tribunal Madras 'A' Bench dated 7.3.2003 in ITA No.639/Mds/95 - Assessment Year 1993-94 against ITA.No. 139/94-95, dated 25/01.95 on the file of the Commissioner of Income Tax (Appeals) Madras 34 against PAN 57-066-CU-3051-93 dated 8.11.94 on the file of the Deputy Commissioner of Income Tax, Special Range II, Madras-34.

For Appellant : Mrs.Pushya Sitaraman
Senior Standing Counsel for
Income Tax.

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbraya Aiyar

JUDGMENT

(The judgment of the Court was delivered by
CHITRA VENKATARAMAN,J)

The above appeal is by the Revenue, relating to the Assessment Year 1993-94. The two questions of law that arise for consideration in this appeal are as follows:-

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that where the assessment was under Section 115J for the earlier year, the assessee is entitled to excess depreciation?

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that for a

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prima facie adjustment under Section 143(1)(a), the assessing officer cannot look at the earlier year's returns?

2. This is related to granting of excess depreciation while computing the income as per provisions of Section 115J. The assessing authority originally accepted the return under Sec 143(1)(a) without any prima facie adjustment in the intimation and granted the depreciation as claimed by the assessee. Considering the apparent mistake on the question of granting excess depreciation, the Assessing Authority sought to rectify the intimation under Section 143(1)(a) by taking a recourse to Section 154. The Assessing Authority, however, took the view that as per Section 115J(2), even where the tax was paid on the basis of book profit, unabsorbed depreciation, investment allowance and past losses would be treated as fully availed to the extent of statutory profits of the year. Hence, the written down value of the assets to be adopted for determining the depreciation would be after deduction of the depreciation calculated under the normal provisions of the Act in the earlier assessment year in which the total income was assessed under Section 115J. On appeal, the Commissioner allowed the stand of the assessee that in respect of a debatable issue, there could not be an adjustment under Section 143(1)(a). He also referred to Circular No.689 dated 24.8.1994 to the same effect as stated above. He thus allowed the appeal.

3. Aggrieved by this, the Revenue filed an appeal before the Tribunal. It noted that admittedly the Assessing Officer sought to disallow the depreciation by rectifying the original intimation under Section 143(1)(a). The income in the earlier years was computed under Section 115J. As per Section 115J(2), the depreciation has to be determined and carried forward without any reference to Section 115J(1). In any event, considering the fact that there could not be a rectification on a debatable issue, the Tribunal rejected the plea of the Revenue.

4. The learned senior standing counsel fairly brought to our attention a decision of this Court reported in 273 ITR 350 (CIT v. NAMEEL LEATHERS AND UPPERS) and 283 ITR 200 (CIT Vs. SESHASAYEE PAPER AND BOARDS LTD.), on the scope of Section 143(1)(a) with reference to the jurisdiction available under Section 154 of the Act. While considering similar contention on the jurisdiction under Section 154 of the Act, this Court held that the debatable issue does not fall within the purview of prima facie adjustment or for rectification. As such, considering the debatable nature of the claim at the time Section 143(1)(a) was exercised and the scope of rectification under Section 154 of the Act, the order of the Tribunal is upheld to hold that the rectification taken in the proceedings embarked upon is totally unsustainable.

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In the light of the view we have taken, the Tax Case Appeal stands rejected since no substantial question of law arises for consideration.

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Sd/-
Assistant Registrar,

/true copy/

Sub Assistant Registrar.

To

1.THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL,
RAJAJI BHAVAN III FLOOR,
BESANT NAGAR, CHENNAI

2. THE COMMISSIONER OF INCOME TAX
APPEALS MADRAS 34

3. THE DY COMMISSIONER OF INCOME
TAX, SPL RANGE II MADRAS 34

4. THE COMMISSIONER OF INCOME TAX
CHENNAI.

+ One cc to M/s Pusya Sitaraman Advocate Sr 8976
+ One cc to Mr.R. Vijayaraghavan Advocate SR 8752

MM (co)
sg 16/3/07

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